

House Bill 197 (AS PASSED HOUSE AND SENATE)

By: Representatives Fleming of the 117th, Lindsey of the 54th, and Hatfield of the 177th

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure,
2 so as to require parties to raise specific objections to jury charges prior to the jury retiring to
3 deliberate; to provide that failure to raise objections shall preclude appellate review except
4 under limited circumstances; to repeal provisions allowing review of sentences of
5 imprisonment for a period exceeding 12 years by a three-judge panel; to provide for the
6 disposition of cases currently under review or in the pipeline for review; to provide duties
7 and responsibilities of the president of The Council of Superior Court Judges of Georgia with
8 respect to abolishing the three-judge panel; to amend Code Section 15-6-77 of the Official
9 Code of Georgia Annotated, relating to fees in superior court, so as to correct a
10 cross-reference; to provide for related matters; to provide for an effective date and
11 applicability; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
15 amended by adding a new Code section to read as follows:

16 "17-8-58.

17 (a) Any party who objects to any portion of the charge to the jury or the failure to charge
18 the jury shall inform the court of the specific objection and the grounds for such objection
19 before the jury retires to deliberate. Such objections shall be done outside of the jury's
20 hearing and presence.

21 (b) Failure to object in accordance with subsection (a) of this Code section shall preclude
22 appellate review of such portion of the jury charge, unless such portion of the jury charge
23 constitutes plain error which affects substantial rights of the parties. Such plain error may
24 be considered on appeal even if it was not brought to the court's attention as provided in
25 subsection (a) of this Code section."

SECTION 2.

Said title is further amended by repealing and reserving Code Section 17-10-6, relating to review of sentences of imprisonment for a period exceeding 12 years by a three-judge panel, as follows:

"17-10-6.

~~(a) In any case, except cases in which the death penalty is imposed or cases involving a serious violent felony as defined in subsection (a) of Code Section 17-10-6.1, in which a sentence of 12 or more years, or several consecutive sentences which total 12 or more years, has been fixed and imposed by a judge, without a jury, the defendant shall have the right to have the sentence or sentences reviewed by a panel of three superior court judges to determine whether the sentence or sentences so imposed are excessively harsh. Consideration shall be given in the review to the nature of the crime for which the defendant has been convicted and to the defendant's prior criminal record. Any defendant seeking a review of such sentence or sentences shall make application therefor within 30 days of the date on which the sentence was imposed by a judge of the superior court or after the remittitur from the Court of Appeals or Supreme Court affirming the conviction is made the judgment of the sentencing court, whichever occurs last. The application shall be filed with the clerk of the superior court in which the sentence was imposed. Upon the filing of an application the clerk shall transmit the same to the three-judge panel created under this Code section within ten days of the date on which the application was filed. For such service, the clerk shall receive the fees prescribed in Code Section 15-6-77 from the funds of the county, except where the clerk is on a salary. It shall be the duty of the judge imposing the sentence and any probation officer to transmit, within ten days of the filing of an application for review of a sentence, a copy of any presentence or postsentence report prepared by the probation officer, including the record of the defendant, to the three-judge panel.~~

~~(b) For the purpose of reviewing sentences, as provided by this Code section, there is created a panel of three superior court judges, to be appointed by the superior court judge then serving as president of The Council of Superior Court Judges of Georgia. Judges so appointed shall serve for a term of three months and until their successors are duly appointed and qualified. Judges so appointed shall receive their actual expenses incurred in the performance of their duties on the panel but shall receive no additional compensation. The expenses shall be paid from funds appropriated to, or otherwise available to, the judicial branch of state government. The panel shall be furnished offices, supplies, materials, and secretarial assistance required for the performance of their duties by the state. The panel shall meet at the state capital at such times as may be required for the review of sentences, provided that all applications for review of sentences shall be~~

~~heard within three months from the date on which they are filed. No judge appointed to a panel shall review a sentence which he has imposed on the trial of the case in the superior court or participate in any such review. If such a case is brought before the panel, the president of The Council of Superior Court Judges of Georgia shall have the authority to appoint an additional superior court judge as a member of the panel for the review of the case.~~

~~(c) The three-judge panel provided for by this Code section shall have the authority to review sentences upon application of the defendants in such cases. In the review of the sentences the defendant and the district attorney shall have the right to present written argument relative to the sentence imposed and the harshness or justification thereof. If, in the opinion of the panel, the sentence imposed by the trial judge is too harsh or severe in light of all of the circumstances surrounding the case and the defendant, and in light of the defendant's past history, the panel shall have the authority to issue an order reducing the sentence originally imposed by the trial judge. The panel shall not have the authority, however, to reduce any sentence to probation or to suspend any sentence. The panel shall not be required to file written opinions but shall file a copy of any order or remittitur reducing a sentence with the superior court which originally imposed the sentence.~~

~~(d) The reduction of a sentence or the refusal to reduce a sentence by the panel shall not be reviewable. The provisions for review of sentences provided by this Code section shall not be deemed to affect the right to appeal or any practices, procedures, or time limitations relative to appeals to appellate courts. A defendant shall not have the right to file more than one application for a review of a sentence, and any order issued by the panel reducing or refusing to reduce any sentence covered by an application shall be binding on the defendant and the superior court which imposed the sentence.~~

~~(e) This Code section shall not apply to cases in which the death penalty is imposed.~~

~~(f) This Code section shall not apply to sentences imposed in misdemeanor cases or cases in which a life sentence is imposed for murder Reserved.~~

SECTION 3.

Said title is further amended by adding a new Code section to read as follows:

"17-10-6.3.

(a) As used in this Code section, the term 'three-judge panel' means the three-judge panel that was created and existed pursuant to the former provisions of Code Section 17-10-6 as it existed on June 30, 2007, which reviewed certain sentences to determine if a sentence was excessively harsh and what relief, if any, should be given.

(b) The right of a defendant to have a sentence reviewed by a three-judge panel shall be terminated for sentences imposed by a trial or appellate court on or after July 1, 2007. No

new application for review of a sentence shall be transmitted to the three-judge panel on or after July 1, 2007, except for cases in which a sentence was imposed prior to July 1, 2007.

(c) No new application for review of a sentence shall be accepted by the three-judge panel unless such application has been received by the three-judge panel on or before September 1, 2007. Any sentence that has an application for review with the three-judge panel pending on September 1, 2007, shall have such review completed by the three-judge panel by November 1, 2008.

(d) It shall be the duty of the president of The Council of Superior Court Judges of Georgia to cause all administrative measures which may be necessary to conclude the business of the three-judge panel to be completed no later than January 1, 2009. Such administrative, clerical, or secretarial personnel as may be assigned to provide support for the three-judge panel may continue to be employed for the purpose of providing support to the president of The Council of Superior Court Judges of Georgia until January 1, 2009.

(e) No later than January 1, 2009, all records and documents relating to the activities of the three-judge panels during the period July 1, 1974, through November 1, 2008, shall be transmitted to the Department of Archives and History for retention in accordance with Article 5 of Chapter 18 of Title 50, the 'Georgia Records Act.' All equipment, supplies, and materials which the president of The Council of Superior Court Judges of Georgia determines are excess or surplus shall be distributed by the president to the judges of the superior courts for use in the performance of their official duties. Any fees or expenses due to any clerk, superior court judge, or other person as a result of the three-judge panel shall be paid out of such funds as are appropriated for the operation of the superior courts during fiscal year 2009."

SECTION 4.

Code Section 15-6-77 of the Official Code of Georgia Annotated, relating to superior court fees, is amended by revising paragraph (5) of subsection (h) as follows:

"(5) Preparation and transmission of documents to superior court	
sentence review panel in accordance with Code Section 17-10-6, first	
copy, per page.....	1.50
Subsequent copies, per page.....	.50 <u>Reserved."</u>

SECTION 5.

This Act shall become effective on July 1, 2007, and shall apply to all trials which occur on or after July 1, 2007.

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- SECTION 6.**
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- All laws and parts of laws in conflict with this Act are repealed.